

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
APPELLATE DIVISION

JOYCE M. STEPHENS, and JOYCE
M. STEPHENS, TRUSTEE OF THE
JOYCE M. STEPHENS FAMILY TRUST,
Appellants,

REF: 20-000011AP-88A
UCN: 522020AP000011XXXXCI

-vs-

PINELLAS COUNTY, FLORIDA,
Appellee.

_____ /

Opinion filed _____

Appeal from decision of,
Code Enforcement Board
Pinellas County

Justin R. Infurna, Esq.
Attorney for Appellants

Diriki T. Geuka, Esq.
Attorney for Appellee

PER CURIAM

Appellants, Joyce M. Stephens and Joyce M. Stephens, Trustee of the Joyce M. Stephens Family Trust, appeal the Order Assessing an Administrative Fine Until Compliance is Achieved. Upon review of the briefs, the record on appeal and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We affirm.

STATEMENT OF FACTS

Appellants are the owners of property located at 7358 46th Avenue N., St. Petersburg, FL. On October 15, 2019 Pinellas County Zoning code enforcement officers alleged in in

Affidavits of Noncompliance that Appellants were in violation of Pinellas County Code (“PCC”) 138-90 “creating a land disturbance by placing and maintaining recreational vehicle hookups including water, sewage, and electrical” and PCC 138-203 “for the modification and expansion of the approved Non-Conforming Use (NCU#71) by operating a campground facility, allowing the occupation of recreation vehicles, and for the installation of water/sewer/electrical hookups on the property without first obtaining special approval as a type 2 review”. Pursuant to a Notice of Hearing issued January 31, 2020 a hearing was scheduled for February 18, 2020 before a special magistrate. The Notice of Hearing contains the following language:

ADVICE TO THE PUBLIC: Any party wishing to appeal a decision made with respect to any matter considered at the above Special Magistrate Hearing, will need a verbatim record of the proceedings, including the testimony and evidence, which record is not provided by Pinellas County.

Both briefs state that Appellant was present at the hearing. Following the February 18, 2020 hearing, the special magistrate issued an ORDER ASSESSING AN ADMINISTRATIVE FINE UNTIL COMPLIANCE IS ACHIEVED with the following Findings of Fact:

Based upon the evidence and sworn testimony received, the Special Magistrate finds that: The property located 7358 46th Avenue N., St. Petersburg, FL (“Property”) contains the deficiencies as listed in the Affidavit of Violation and Request for Hearing dated January 14, 2020 and each is herein incorporated by reference.

In this appeal, Appellants challenge the order of the special magistrate finding that the property at 7358 46th Avenue N., St. Petersburg was in violation of the zoning codes.

STANDARD OF REVIEW

A circuit court review of local governmental administrative action is whether due process was afforded, whether the administrative body applied the correct law and whether the findings are supported by competent substantial evidence. The standard of review shall not be a

hearing de novo but shall be limited to appellate review of the record created before the enforcement board. Florida Statute §162.11 (2017); *Sarasota County v. Bow Point on Gulf Condo, Developers, LLC*, 974 So. 2d 431 (Fa. 2d DCA 2007). Competent substantial evidence “involves a purely legal question: whether the record contains the necessary quantum of evidence.” *Lee County V. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). This Court sitting in its appellate capacity is not permitted to reweigh the evidence or to substitute its judgment for that of the Code Enforcement Board. See *City of Deland v. Benline Process Color Co., Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986).

DISCUSSION

Appellants raise three issues on appeal. Appellants’ first and second arguments are that there was no competent substantial evidence in the record to support the findings of the special magistrate that Appellants were in violation of Pinellas County Zoning Codes 138-203 and 138-90.

Appellants have not provided a transcript in the record of the hearing before the special magistrate. A finding of the lower tribunal comes to a reviewing court “with a presumption of correctness and cannot be disturbed absent a record demonstrating reversible error.” *P.W. and A. K. v. Department of Children and Families*, 10 So.3d 707 (Fla. 4th DCA 2009). The burden is on the appellant to demonstrate reversible error and present an adequate record for review. *Applegate v. Barnett Bank of Tallahassee*, 377 So.2d 1150, 1152 (Fla. 1st DCA 2003). Without an adequate record of the proceedings below, the appellate court cannot properly resolve factual issues to conclude that the lower court’s judgment is not support by evidence or an alternate theory. “[W]ithout knowing the factual context, neither can an appellate court reasonably conclude that the trial court so misconceived the law as to require reversal.” *Id.* At 1152. The Supreme Court in

Appellate held that a reviewing court could not conduct a meaningful appellate review without a trial transcript. *Appellate*, 377 So.2d at 1159. Likewise, this Court is unable to conduct a meaningful appellate review of the lower tribunal. A circuit court reviewing a final administrative order of an enforcement board cannot engage in de novo review, and it shall limit its review to “the record created before the enforcement board.” Fla. Stat. §162.11. Appellants’ brief states that their predecessor in title, Gerald Stephens, was granted a non-conforming use status for the property on June 11, 1908. See Composite A, page 15. Appellants posit that there was no showing that the non-conforming use was discontinued or abandoned. Again, as there is no transcript of the proceedings, this Court cannot determine if that issue was addressed or if the non-conforming use status for the property was recognized.

Appellants’ third argument is that the special magistrate’s order contains an inadequate basis for finding noncompliance on the part of Appellants which results in a lack of procedural due process. “The trial court’s decision could well be supported by the evidence adduced at trial [or hearing] but not stated in the judge’s order or otherwise apparent in the complete record on appeal.” *J.P. Morgan Chase Bank v. Combee*, 883 So.2d 330 (Fla. 1st DCA 2004). Appellants cite *Dean v. Rutherford Mulhall*, 16 So.3d 284 (Fla. 4th DCA 2009) for the rule that where there is reversible error on the face of the record, the appellate court may set aside the judgment and *Citizens Property Insurance v. Anderson*, 241 So.3d 221 (Fla. 2d DCA 2018) wherein the appellate court found the trial court did not properly state the “multiplier factors” for an attorney fee award. The order in *Citizens* was erroneous on its face as the trial judge had not made a specific finding necessary for the application of the contingent fee multiplier. Here, the special magistrate states his findings of fact are “Based upon the evidence and sworn testimony received”. This court cannot properly resolve factual issues and has no basis to conclude the

special magistrate decision was not supported by the evidence, including the testimony, adduced at trial. Appellants state that the special magistrate's findings resulted in a lack of procedural due process. Due process requires notice and an opportunity to be heard. *Massey v. Charlotte County*, 842 So.2d 142 (Fla. 2d DCA 2003). Here, Appellee provided Appellants with Zoning Notice of Violation. Appellants requested a hearing before the special magistrate. The Notice of Hearing specifically advised that "Any party wishing to appeal a decision made with respect to any matter considered at the above Special Magistrate Hearing, will need a verbatim record of the proceedings, including the testimony and evidence, which record is not provided by Pinellas County". Appellants were afforded procedural due process as she had notice of the zoning violations, notice of the hearing and an opportunity to present testimony and evidence at the hearing.

CONCLUSION

Based on the facts and analysis set forth above, the order of the Pinellas County Code Enforcement is affirmed.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this
_____ day of _____, 2020.

TRUE COPY

Original Order entered on September 15, 2020, by Circuit Judges Jack R. St. Arnold, Keith Meyer, and Sherwood Coleman.

Justin R. Infurna, Esq.
The Infurna Law Firm

121 South Central Avenue, Suite 1500
Orlando, FL 32801

Diriki T. Geuka, Esq.
Assistant County Attorney
315 Court Street, Sixth Floor
Clearwater, FL 33756